

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

CHRIS FINLEY,
Special Administrator of the Estate of
Christopher Grant Finley

PLAINTIFF

v.

No. 3:18-cv-55-DPM

HEATH LOGGAINS and
CITY OF JONESBORO, ARKANSAS

DEFENDANTS

ORDER

1. Pretrial and Trial Architecture. On the first day of trial, 7 June 2021, we'll have a final pretrial at noon in Jonesboro chambers. We'll start with the venire at 1:00 p.m. Counsel should be prepared to open Monday afternoon. Each side gets thirty minutes to open. We'll start the proof at 8:30 Tuesday morning. Each side will have forty-five minutes to close.

2. Jury Instructions. The Court is attaching its working drafts of (1) the *voir dire*, (2) the preliminary instructions, (3) the final instructions—liability phase, (4) verdict no. 1, (5) the final instructions—damages phase, and (6) verdict no. 2. The Court appreciated the parties' proposals. Please file any objection to, or suggestion about, the *voir dire* or the preliminary instructions by 25 May 2021. Hold objections about the other drafts until trial. We'll work on them then.

3. The Court also appreciates Defendants' supplemental briefing on the lingering issues about municipal liability. Defendants' renewed request for qualified immunity for Loggains, *Doc. 74 at 7-10*, is denied without prejudice. Fact issues remain. *Doc. 67, passim*. Defendants' request for a final ruling on potential municipal liability, *Doc. 74 at 5-6*, is likewise denied without prejudice. The Court's mind has still not come to rest about ARK. CODE ANN. § 21-9-301, malice, and intentional conduct. Defendants' embedded motions *in limine*, *Doc. 79 at 1-3*, are denied without prejudice. The deadline for motions *in limine* has passed, *Doc. 69*. The Court will deal with these evidentiary issues at trial. Defendants are correct that punitive damages are not available against Jonesboro under state or federal law. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981); *Thompson v. Montgomery*, 2007 WL 1875787, at *7 (E.D. Ark. 28 June 2007) (construing ACRA claims in accordance with § 1983).

4. Witnesses and Exhibits. By the close of business on Wednesday, 2 June 2021, the parties must submit their final lists of witnesses and exhibits, the original pre-marked exhibits, and the Court's courtesy copy, in three-ring binders to Little Rock chambers. Please also include an electronic copy of each item. And please use the Court's forms for both exhibit and witness lists. If the parties plan to use electronic exhibits, they should have paper copies available as a fall-back.

5. *Voir Dire*. The Court will conduct most of the questioning, with follow-up by each side—ten to fifteen minutes at most. Please focus your questioning. *Voir dire* is not a time to explain the law or the burden of proof, to explain what the case is about, to seek commitments, or to pump the potential jurors full of fairness. Instead, please ask lean questions about potential jurors' experiences and views to ferret out bias. If the parties would prefer to have the Court ask certain questions, please submit them to chambers for consideration by 25 May 2021.

6. **Objections.** Avoid speaking objections during the trial. A word or two will do. If the Court needs to hear more, we'll have a bench conference.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.

United States District Judge

18 May 2021